



# FEDERAL ELECTION COMMISSION

Washington, DC 20463

## MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KL*

DATE: August 28, 1997

SUBJECT: MUR 4434-First General Counsel's Report

The attached is submitted as an Agenda document for the  
Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

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24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

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AUDIT MATTERS

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**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

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AUG 28 11 22 AM '97

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

MUR: 4434

DATE COMPLAINT FILED: August 8, 1996

DATE OF NOTIFICATION: August 13, 1996

DATE ACTIVATED: October 4, 1996

STAFF MEMBER: Tony Buckley

COMPLAINANT: Nick Baldick  
Florida Democratic Party

RESPONDENTS: Mark Sharpe  
Mark Sharpe for Congress and Mark Brown, as treasurer  
Friends of Mark Sharpe and Elizabeth Dillard, as treasurer  
Outback Steakhouse of Florida, Inc.  
Joseph Kadow  
Robert Basham  
Chris Sullivan  
Kimberlee Brown  
Kevin Harron

RELEVANT STATUTES: 2 U.S.C. § 431(13)(A)  
2 U.S.C. § 434(a)(1)  
2 U.S.C. § 434(b)(3)(A)  
2 U.S.C. § 441a(a)(1)(A)  
2 U.S.C. § 441b(a)  
2 U.S.C. § 441b(b)(2)  
2 U.S.C. § 441f  
11 C.F.R. § 104.7(a)  
11 C.F.R. § 104.7(b)(2)  
11 C.F.R. § 104.7(b)(3)  
11 C.F.R. § 104.8(c)  
11 C.F.R. § 104.9(a)(1)(i)  
11 C.F.R. § 114.1(a)(2)(x)  
11 C.F.R. § 114.2(b)  
11 C.F.R. § 114.2(d)  
11 C.F.R. § 114.3(a)(1)  
11 C.F.R. § 114.9(a)(1)  
11 C.F.R. § 114.9(e)(1)

INTERNAL REPORTS CHECKED:      Disclosure Reports  
   MUR Index  
   Advisory Opinion Index

FEDERAL AGENCIES CHECKED:      None

**I.      GENERATION OF MATTER**

This matter was generated by a complaint filed by Nick Baldick of the Florida Democratic Party based on a newspaper report appearing in the June 30, 1996 issue of the *Tampa Tribune*. The complaint suggests that several violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), occurred involving Mark Sharpe for Congress, the principal campaign committee of Mark Sharpe in the 1994 race for the House seat from Florida's 11th Congressional district, and further alleges a then-imminent violation involving Friends of Mark Sharpe, Mr. Sharpe's principal campaign committee in the 1996 race for the same House seat (collectively "the Sharpe campaign").

With regard to the 1994 race, the complaint first alleges that Joseph Kadow, an officer of Outback Steakhouse of Florida, Inc. ("Outback"),<sup>1</sup> acted as a conduit or intermediary who exercised "direction or control" over contributions to Mark Sharpe for Congress. As a result, Kadow exceeded several contribution limits, and Kadow and Mark Sharpe for Congress may have failed to file appropriate reports of conduit contributions.

The complaint further alleges that Mark Sharpe for Congress filed inaccurate information with regard to certain specified contributions. With regard to a contribution from one Mel Danker, the complaint alleges that under "Employer" he was listed as "retired," while another

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<sup>1</sup> Although the complaint references "Outback Steakhouse, Inc.," information available to this Office indicates that the correct name of the company which is involved in the alleged illegal activities is Outback Steakhouse of Florida, Inc.

congressional committee which received a contribution from him reported him as working for Outback. With regard to a contribution from one Kimberlee Brown, the complaint alleges that Mark Sharpe for Congress should have properly reported her husband, Kevin Harron, an officer at a New England Outback franchise, as the contributor. The complaint suggests that Mark Sharpe for Congress purposefully listed the contribution "under [Ms. Brown's] maiden name rather than her married last name," and that, because of this one instance, Mr. Kadow and Mark Sharpe for Congress were involved in soliciting and accepting contributions made in the names of others.

Additionally, the complaint cites to the *Tampa Tribune* article in suggesting that, in "numerous instances," Mark Sharpe for Congress improperly provided the address of Outback's Tampa headquarters rather than the proper mailing address for contributors. The complaint suggests that Mark Sharpe for Congress failed to employ "best efforts" in obtaining relevant information about contributors. The complaint further alleges that Mark Sharpe for Congress accepted corporate contributions from Outback through the use of Outback's corporate jet without paying in advance for that use.

Finally, in connection with the 1996 election, the complaint alleges that Friends of Mark Sharpe was about to accept corporate contributions from Outback in the form of Outback's "facilitation" of contributions.

This report analyzes the information currently in hand, and makes recommendations for certain reason to believe findings against Mark Sharpe for Congress and its treasurer, Outback Steakhouse of Florida, Inc., and certain corporate officers of Outback.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Applicable Law

Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person shall make contributions to a candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. Absent evidence to the contrary, any contribution made by check, money order, or other written instrument shall be reported as a contribution by the last person signing the instrument prior to delivery to the candidate or committee. 11 C.F.R. § 104.8(c).

Pursuant to 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(b) and (d), it is illegal for any corporation to make a contribution in connection with any election for Federal office, and for any officer or director of a corporation to consent to any such contribution, or for any political committee to accept any such contribution. The term "contribution" means "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate [or] campaign committee . . . in connection with" an election to Federal office. 2 U.S.C. § 441b(b)(2). The use by a candidate or his agent of an airplane which is owned or leased by a corporation, other than a corporation licensed to offer commercial services, for travel in connection with a Federal election, will not be considered to be a corporate contribution as long as the corporation is properly reimbursed in advance for the cost of the flight. *See* 11 C.F.R. § 114.1(a)(2)(x); *see generally* 11 C.F.R. § 114.9(e)(1).<sup>2</sup> Employees of a corporation may make "occasional, isolated or incidental use of the facilities of the corporation for individual volunteer activity in connection with a Federal election and will be

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<sup>2</sup> In the case of travel to a city with regularly scheduled commercial service, proper reimbursement is the first class air fare. 11 C.F.R. § 114.9(e)(1)(i). In the case of travel to a city not served by a regularly scheduled commercial service, proper reimbursement is the usual charter rate. 11 C.F.R. § 114.9(e)(1)(ii).

required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are increased.” 11 C.F.R. § 114.9(a)(1). “Occasional, isolated or incidental use” means, when used by employees during working hours, “an amount of activity . . . which does not prevent the employee from completing the normal amount of work which that person usually carries out during such work period.” 11 C.F.R. § 104.9(a)(1)(i).

A corporation may suggest to its restricted class that they contribute to a particular candidate, without that action being considered a corporate contribution or expenditure, but may not facilitate the making of the contribution or act as a conduit for the contribution. *See* 11 C.F.R. § 114.3(a)(1); *see also* Advisory Opinion 1987-29. When a corporation facilitates the making of a contribution by a person to a political committee, that action is in itself a contribution by the corporation to that same political committee.

Pursuant to 2 U.S.C. § 434(a)(1), the treasurer of each political committee shall file reports of receipts and disbursements in accordance with certain provisions. Such reports shall include, *inter alia*, the identification of “each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year, . . . together with the date and amount of any such contribution.” 2 U.S.C. § 434(b)(3)(A).

Where an individual is concerned, the term “identification” means “the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer.”

2 U.S.C. § 431(13)(A). A treasurer must report all contributor information not provided by the contributor, but in the political committee’s possession regarding contributor identifications.

11 C.F.R. § 104.7(b)(3).

Where a treasurer does not have the requisite information, the reporting requirements will be deemed to have been met when the treasurer shows that "best efforts" have been used to obtain, maintain and submit the required information. 11 C.F.R. § 104.7(a). With regard to information concerning the "identification" of a contributor, a treasurer is required to make at least one effort after the receipt of the contribution to obtain the missing information. 11 C.F.R. § 104.7(b)(2). This effort must consist of either a written request sent to the contributor or an oral request to the contributor documented in writing, and must be made no later than 30 days after receipt of the contribution. *Id.*

Pursuant to 2 U.S.C. § 441f, no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

## **B. Responses to Complaint**

### **1. Response of Outback Steakhouse of Florida, Inc. and Joseph Kadow**

A joint response was received from Outback and Mr. Kadow addressing all of the allegations made against them.

The response first sets out what Respondents believe are relevant facts. Regarding the corporate structure, the response notes that Outback is a corporation with interests in approximately 350 restaurants. Approximately 85 percent of the restaurants are organized as partnerships in which Outback is the general partner with an 81-90 percent controlling interest, with the remaining interest owned by the individual restaurant's general manager and a joint venture partner ("JVP"), which is a separate corporation generally owned by a single individual. The remaining 15 percent of these restaurants are operated by unaffiliated franchisees.

According to the response, Joseph Kadow has been Vice President and General Counsel of Outback since April 1994. Among his duties, Mr. Kadow supervises the Outback Political Action Committee ("Outback PAC").

According to the response, Mark Sharpe asked Kadow to serve on his campaign's finance committee in June 1994, and Kadow eventually became one of Sharpe's two principal campaign advisors. Kadow states that all of his activities on behalf of the Sharpe campaign were undertaken in his personal (as opposed to corporate) capacity, and performed on his own time.

The response asserts that Kadow's use of corporate resources "in support of his volunteer activity" was minimal, and that he only spent 20-25 hours on campaign-related activity at the office in the four months leading up to the election. The response admits that Kadow's secretary spent approximately 23 hours on campaign related activities and, sometime in 1996, Kadow reimbursed Outback approximately \$450 for her services and for the cost of his telephone calls.

According to the response, Kadow organized a September 17, 1994 fundraising dinner for Sharpe at the home of Outback's current Chief Operating Officer, Robert Basham.

Outback PAC "arranged and paid most of the costs of the fundraiser," which were reported as in-kind contributions to the campaign. Basham was "a friend of Mr. Sharpe before the 1994 campaign, and an early supporter of the Sharpe campaign." In addition to Kadow, "a number of individuals -- including other campaign officials and several Outback executives -- contributed their time and effort to the event." The invitation list to the fundraiser consisted of past contributors to the state and local Republican Party and personal contacts of campaign officials and organizers of the fundraiser. Of the 100 people attending the fundraiser, 15 were Outback officials, JVP owners, franchisees, and major investors in Outback. Eleven spouses of these



individuals attended. Congressman Newt Gingrich was transported to the event via an Outback corporate jet, for which Mark Sharpe for Congress had previously reimbursed Outback \$331, on September 14, 1994.<sup>3</sup>

In the weeks leading up to the election, Kadow, allegedly in his personal capacity, solicited additional individuals on behalf of Mr. Sharpe. The persons solicited included persons described as Kadow's "acquaintances," including Outback executives, franchisees and JVP owners. Kadow also solicited "others within the food service industry and the Tampa community." According to the response, some checks were sent to Mr. Kadow at his home or office, and some were sent directly to the Sharpe campaign. Checks sent to Kadow were delivered by him to the campaign after working hours.

Regarding the substance of the allegations, the response argues that Mr. Kadow is exempt from the definition of a "conduit" because he was acting as an agent of the campaign pursuant to the requirements of 11 C.F.R. § 110.6(b)(2)(i)(E). Alternatively, the response argues that, even if Mr. Kadow was a conduit or intermediary, he did not exercise any direction or control over the choice of the recipient candidate.

Regarding improper reporting, the response states that contributors primarily employed by Outback listed Outback, while contributors employed elsewhere listed their place of employment. The response asserts that, although certain contributors may have had connections to Outback through being a spouse or girlfriend of an Outback employee, or through another connection to Outback, the law does not require that connection to be reported.

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<sup>3</sup> According to the response, Outback was also reimbursed in advance for the two other times on which federal candidates used its corporate jet during the 1994 campaign.

Regarding illegal corporate contributions through corporate involvement, the response first states that both the Sharpe campaign and Outback have fully complied with the Commission's regulations with respect to the use of corporate aircraft. The response also addresses any possible contribution through use of corporate resources in support of Mr. Sharpe. It states that Kadow "made only 'occasional, isolated or incidental use' of Outback" corporate resources, and that his efforts "in no way interfered with his duties for Outback." The response further states that Kadow made a belated but full reimbursement to Outback for the costs of telephone calls made to solicit contributions. With regard to the efforts of Kadow's secretary, Kadow states that she considered herself to be a volunteer for the campaign.

The response further states that the Commission's regulations regarding "facilitation" do not apply to Kadow's receipt of contributions at the office and his delivery of them to the Sharpe campaign. Respondents rely on AO 1996-1, in which the Commission was "unable to issue advice" as to whether members of an incorporated membership association who occupied significant positions in the campaigns of federal candidates "could receive contributions from other members of the organization and forward those checks to individual candidates." Respondents argue that the facts in the instant matter provide an even weaker case for corporate facilitation, in that Kadow undertook all of his campaign activity on his own behalf, not as a part of an organized effort by Outback; and Kadow's activities were undertaken on behalf of a candidate for the district in which his home and business were located, "meaning that he had a distinctly personal connection to the Sharpe campaign."

## 2. Response of the Sharpe Campaign

A response has also been received from the Sharpe campaign. Regarding the allegation that earmarking regulations were violated, the Sharpe campaign states that Kadow was expressly authorized by the campaign to engage in fundraising and, therefore, his activities “qualify as an exception to the earmarking regulations of the Act.” The Sharpe campaign also addresses the specific instances of filing incomplete or incorrect reports, as alleged in the complaint. First, the Sharpe campaign states that the employer information for Mel Danker, who was listed as retired, was supplied by Mr. Danker. Next, with regard to the check made out by Kimberlee Brown, the Sharpe campaign states that it received a check with her name at the top and her signature on it and, on its face, it was a contribution from Kimberlee Brown. With regard to the use of the Outback corporate headquarters address as the mailing address for certain contributors, the Sharpe campaign states that this address was only used for four contributors, and that three of the four individuals work on the premises and so it was proper to use the corporate address as their mailing address.<sup>4</sup>

Finally, regarding the issue of corporate contributions, the Sharpe campaign simply states that, “[r]egarding the one-time use of a corporate jet for campaign purposes, there does appear to be an occasion where the timing of the campaign treasurer in making reimbursement was incorrect. Reimbursement occurred following the use when it should have occurred in advance of the use.”

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<sup>4</sup> This Office can find no evidence that the last of the four individuals identified by the Sharpe campaign, Lauren Caine, ever made such a contribution.

### **3. Response of Kevin Harron and Kimberlee Brown**

Mr. Harron and Ms. Brown, who are married, have responded to the allegation that they were somehow involved in an illegal contribution. According to the response, Mr. Harron decided to contribute to the Sharpe campaign, and asked his wife to make out and mail the check. They further state that Ms. Brown handles all of the couple's personal finances.

### **C. Analysis**

#### **1. Corporate Facilitation**

Based on the evidence in hand, it appears that Outback facilitated the making of contributions to the Sharpe campaign. This determination is based not only on Joseph Kadow's activities, but also on the activities of more senior Outback executives, as well as the candidate Mark Sharpe himself.

The facts of this matter are similar in certain respects to a particular fact pattern in MUR 3672 where the Commission found probable cause to believe that corporate facilitation had occurred. In that fact pattern, an executive of Chrysler Corporation solicited, collected and forwarded campaign contributions from corporate personnel. The corporation's and the executive's arguments that the executive's activities were "individual volunteer activity" which only involved "occasional, isolated or incidental use" of corporate facilities, could not override the evidence which showed that the executive's fundraising activities were part of an overall corporate effort. Among the significant factors in this decision were: (1) the executive normally handled the political and charitable functions of Chrysler; (2) the executive solicited exclusively inside Chrysler; (3) the executive delegated certain tasks to his secretary; (4) the executive was

doing fundraising that had been requested of Chrysler's CEO; and (5) the fundraising was described to the executive's fellow Chrysler personnel as a corporate endeavor.<sup>5</sup>

Here, though the facts are somewhat different, they demonstrate the same sort of corporate involvement and purpose as existed in the MUR 3672 fact pattern. This corporate involvement and purpose contradicts the assertions that Joseph Kadow's activity on behalf of the Sharpe campaign was of a "personal" and "voluntary" nature.

First, statements reported in the *Tampa Tribune* demonstrate Outback's corporate interest and involvement in the Sharpe campaign. Kadow appears to confirm Outback's interest in the race, and in supporting Sharpe in particular, stating: "We asked our friends for help. Nobody's denying that. . . . We thought this was a race Mark could win, and we thought [the incumbent] was someone who had not been a friend to our business or to business in general."<sup>6</sup> Rick Fontaine, the treasurer of Mark Sharpe for Congress at the time in question, notes that Kadow, as Outback's corporate attorney, would travel to Outbacks across the country and then return with campaign checks. After Kadow would arrive at night at campaign headquarters with contribution checks, the two "would go outside and talk or go next door to the Marriott."

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<sup>5</sup> By contrast, in MUR 4000, the Commission examined a situation where a corporate executive raised funds on behalf of a Federal candidate, and used corporate resources in carrying out his activities. It was noted that the executive in question met the exemption to being a conduit or intermediary, as he was in a significant position as State Finance Chair of the committee in question and was authorized to engage in fundraising, and his fundraising efforts as conducted were consistent with those facts. For example, when the executive issued a letter soliciting contributions, and that letter was issued from corporate offices, the executive used his campaign title and did not reference the corporation in providing the return address to which contributions could be sent. The Commission also concluded that no corporate facilitation had occurred, because the hallmarks of a classic corporate facilitation case were not present. Specifically, it was noted that there was no organized corporate effort on behalf of the campaign, that letters were not sent to corporate employees and vendors, nor was a corporate mailing list used, and that there was no concerted follow-up to those with a special relationship with the corporation to convince them to contribute.

<sup>6</sup> The *Tampa Tribune* article notes that "[current Outback Chief Executive Officer Chris] Sullivan said support from people like Kadow came without any corporate meeting or plan."

Another campaign worker, a volunteer named Terry Spirio, also remembers Kadow ““bringing in lot of checks,”” and “remembers Sharpe meeting often with Outback officials at their corporate office.”

Second, Outback appears to have incurred fundraising costs on behalf of the Sharpe campaign. The Outback/Kadow response does not contest the assertion that Kadow often traveled to Outbacks around the country and returned with campaign checks. Thus, it appears that Kadow may have either used the Outback corporate jet for these trips, or had his air travel costs paid for by Outback. In addition, Outback apparently assumed other costs involved in fundraising on behalf of Sharpe. According to Kadow, Outback incurred costs of \$450 due to activity by Kadow and his secretary on behalf of the campaign at the office.<sup>7</sup> The Sharpe campaign never reimbursed Outback for these costs. Kadow states that he reimbursed Outback himself in 1996, at least 14 months after the election.<sup>8</sup> Kadow’s apparent use of transportation paid for by Outback, and Outback’s absorption of fundraising costs incurred by Kadow and his secretary, strongly suggest that Kadow was acting on behalf of Outback in fundraising for the Sharpe campaign.<sup>9</sup>

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<sup>7</sup> Kadow has claimed that his secretary volunteered her time; however, the secretary has not indicated to the Commission how she came to be involved in helping the Sharpe campaign.

<sup>8</sup> Kadow never mentions when in 1996 the reimbursement was made, suggesting that he may have done so only after the complaint in this matter was filed.

<sup>9</sup> The response mentions a trip taken by Kadow and Joe Coley on October 30, 1994 to Birmingham, Alabama to assist in the production of a campaign television advertisement on the Outback corporate jet, for which the Sharpe campaign reimbursed Outback. Mark Sharpe for Congress’s 1994 30-Day Post-General Report lists contributions received on October 31 from Roy and Dearing Hockman of Birmingham, Alabama of \$1,000 each, suggesting that, at least in this instance, Joseph Kadow may have also used the Outback corporate jet to pick up contributions to the Sharpe campaign. While no additional costs of the flight would have been incurred, or would have required reimbursement, such an occurrence reinforces the suggestion that Outback corporate aircraft were used in the Sharpe campaign’s fundraising efforts.

Finally, it is apparent that Outback executives other than Kadow were instrumental in obtaining contributions for the Sharpe campaign, and that those who contributed understood this effort to be on behalf of Outback. The *Tampa Tribune* article quotes a number of contributors with Outback connections who explained the reasons for their contributions. One individual, Dearing Hockman, the spouse of an owner of an Outback franchise in Birmingham, Alabama, is quoted as saying: "We're Outbackers. We did this in support of Chris Sullivan." An Outback franchise owner in Virginia and Maryland, B.J. Stone, said that Sullivan and Robert Basham, "explained things to us. It's a very strong partnership. We trust one another. If I needed something from Chris and Bob, they're there for me. It's the heart and soul of the organization." Kevin Harron's statement, that he "made a decision to contribute to Mark Sharpe's campaign," suggests that, at the least, he too was approached by Outback executives.<sup>10</sup>

Given the statements by Dearing Hockman and B.J. Stone, it appears that Outback executives used their Outback connections in soliciting contributions. It further appears that Joseph Kadow conducted a much more extensive effort in seeking support for the Sharpe campaign on behalf of Outback, by traveling to solicit and accept contributions, receiving contributions at Outback's offices, and delivering contributions to the Sharpe campaign. Indeed, although Joseph Kadow has suggested that many of the people he solicited were acquaintances, such "acquaintances" included Outback personnel and other persons whom Kadow apparently

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<sup>10</sup> Other than being influenced by Outback executives and wanting to support the Outback endeavor, this Office cannot discern how Mr. Harron, a resident of Massachusetts with no history of having made a reportable contribution prior to the 1994 elections, would come to the decision to contribute the maximum amount to the challenger in the race for the House seat from Florida's 11th Congressional district.

met as a result of his employment with Outback. It is apparent that Joseph Kadow would not have solicited many of these persons had he not worked for Outback.

Thus, it appears that Outback conducted a concerted effort to engender financial support for the Sharpe campaign. This effort went beyond allowable activity - such as partisan communications to a restricted class - to the collecting and delivering of contributions. Moreover, Outback executives Joseph Kadow, Chris Sullivan and Robert Basham apparently approved of, and took part in, this activity by Outback.

Accordingly, this Office recommends that the Commission find reason to believe that Outback Steakhouse of Florida, Inc., Joseph Kadow, Chris Sullivan and Robert Basham, each violated 2 U.S.C. § 441b(a). Because Joseph Kadow, an agent of Outback, also worked on behalf of the Sharpe campaign in fundraising and other activities, this Office further recommends that the Commission find reason to believe that Mark Sharpe for Congress and Mark Brown, as treasurer, violated 2 U.S.C. § 441b(a).<sup>11</sup>

## **2. Reporting Violations**

The complaint made specific allegations with regard to possible reporting violations by Mark Sharpe for Congress. The allegations go to the proper reporting of the identity of one

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<sup>11</sup> Although the *Tampa Tribune* article suggests that the candidate, Mark Sharpe, may be individually liable for certain violations due to his personal involvement, this Office believes it would better to determine whether there is more concrete evidence of such involvement before making such a recommendation.



contributor, the proper reporting of the employer of another contributor, as well as the proper reporting of the mailing addresses of yet other contributors.

a. Kimberlee Brown and Kevin Harron

With regard to the reporting of a contribution from Kimberlee Brown, the complaint alleges that Mark Sharpe for Congress should have properly reported her husband, Kevin Harron, an officer at a New England Outback franchise, as the contributor.

As noted above, absent evidence to the contrary, any contribution made by check, money order, or other written instrument shall be reported as a contribution by the last person signing the instrument prior to delivery to the candidate or committee. 11 C.F.R. § 104.8(c). Here, the check in question contained the pre-printed names of Kimberlee Brown and Kevin Harron. Kimberlee Brown's signature was actually on the check. While both Kimberlee Brown and Kevin Harron may have intended for Kevin Brown to make the contribution, the fact that Kimberlee Brown signed the check means that she is properly considered to be the contributor. Moreover, as other spouses of other Outback franchisees had made contributions to the Sharpe campaign, the contribution from Kimberlee Brown was not so unique that the identity of the actual contributor should have been called into question. Nor can the Sharpe campaign be considered to have accepted a contribution made in the name of another.

Accordingly, this Office recommends that the Commission find no reason to believe that Mark Sharpe for Congress and Mark Brown, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(A) and 441f, with respect to the acceptance and reporting of the contribution from Kimberlee Brown.

This Office also recommends that the Commission find no reason to believe that Kevin Harron and Kimberlee Brown violated 2 U.S.C. § 441f. Since there is no other apparently illegal involvement by Kevin Harron or Kimberlee Brown in this matter, this Office further recommends that the Commission close the file with respect to them.

**b. Mel Danker**

With regard to the issue of failing to properly report the occupation of Mel Danker, the complaint suggests that the Sharpe campaign should have known the identity of Mr. Danker's employer. In response, the Sharpe campaign asserts that it reported the occupation information as given to them by Mr. Danker.

The Commission's regulations require a treasurer to report all information regarding contributor identification not provided by the contributor, but in the possession of the political committee. *See* 11 C.F.R. § 104.7(b)(3).

The *Tampa Tribune* article reports that Mr. Danker is a relative of Outback CEO Robert Basham. It appears likely that Danker was solicited for his contribution by Joseph Kadow, who had dual roles as an Outback executive and a Sharpe campaign operative. It thus appears that Mr. Kadow would have known of Mr. Danker's true occupation. Given Kadow's statement that he was a "significant advisor" to, and an "authorized fundraiser" for, the Sharpe campaign, any knowledge he had regarding the true occupation of Mel Danker is considered to be known by the Sharpe campaign. As such, it should have been reported.

Accordingly, this Office recommends that the Commission find reason to believe that Mark Sharpe for Congress and Mark Brown, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) with respect to the reporting of the contribution from Mel Danker.

c. Use of Outback headquarters as mailing address

The complaint in this matter suggests that, in "numerous instances," Mark Sharpe for Congress improperly provided the address of Outback's Tampa headquarters rather than the proper mailing address for contributors, and that Mark Sharpe for Congress failed to employ "best efforts" in obtaining the appropriate addresses. Rick Fontaine told the *Tampa Tribune* that often the checks brought to him by Kadow did not have an address. In those instances, Fontaine would ask Kadow for the addresses, and would be told to put "550 N. Reo Street," the address of Outback's Tampa headquarters.

The response from the Sharpe campaign asserts that only four contributions used the North Reo Street address, and that all four individuals involved worked at Outback headquarters. As noted above, this Office cannot find any evidence that one of the individuals mentioned by the Sharpe campaign, Lauren Caine, ever made a contribution. Likewise, although the Outback/Kadow response does not address this point directly, Kadow's affidavit appended thereto states that the corporate address was inaccurately listed for two non-Outback employees: Louis Chiavacci, who works for Goldman Sachs, and Christopher Bliss, who works for Alex Brown & Sons.

In fact, a review of the Sharpe campaign's reports reveals eight individuals for whom the Committee reported the mailing address as 550 North Reo Street. The attached chart shows the date of the contributions, the individuals making the contributions, their employers, and the amounts of the contributions. The three individuals identified as working for Outback are corporate executives of that corporation, and thus it is conceivable that the corporate address is a legitimate mailing address for them. However, three individuals are identified as having worked

for companies other than Outback, one is identified as a homemaker, and the last has no information regarding occupation, suggesting that the person does not work for Outback.

<u>NAME</u>	<u>EMPLOYER</u>	<u>DATE</u>	<u>AMOUNT</u>
Robert Basham	Outback	06/30/94	\$1,000
Tim Gannon	Outback	08/31/94	1,000
		09/27/94	1,000
Louis J. Chiavacci	Goldman Sachs	09/29/94	500
		10/17/94	500
Gene Knippers	Sun State Ventures	10/18/94	1,000
Christopher L. Bliss	Alex Brown & Sons	10/19/94	500
Chris Sullivan	Outback	10/29/94	1,000
Ronald Patak	No Information	10/31/94	1,000
Jodi Collins <sup>12</sup>	Homemaker	11/05/94	<u>1,000</u>
		total	\$8,500

The same regulation that applied to the contribution of Mel Danker applies here. Indeed here, it appears that the treasurer of Mark Sharpe for Congress had sufficient information by which he should have concluded that the addresses given for those persons not employed by Outback were incorrect. First, given the contacts between Outback and the Sharpe campaign, the treasurer should have known that the address in question was that of Outback's headquarters and that it was, therefore, inappropriate to use it for individuals not connected with Outback. Moreover, given the circumstances under which the Outback address was provided, the treasurer should have known that it was incorrect. Therefore, the treasurer of Mark Sharpe for Congress cannot be said to have made "best efforts" to determine the correct information for Louis J.

<sup>12</sup> On November 5, 1994, the Sharpe campaign filed an FEC Form 6, 48-Hour Notice for a \$1,000 contribution made on that same date by Jodi Collins. On that same form, directly under the contribution from Ms. Collins, was a \$1,000 contribution from Jessica McGee. Subsequently, on its 1994 30-Day Post-General Report, the Sharpe campaign reported a \$1,000 contribution on November 5, 1994 from Jodi McGee, using the North Reo Street address. It appears that the person filling out the Sharpe campaign's report copied the information from the Form 6 and mistakenly wrote down "McGee" instead of "Collins", and that Jodi Collins and Jodi McGee are in fact the same person.

Chiavacci, Gene Knippers, Christopher L. Bliss, Ronald Patak and Jodi Collins. Accordingly, this Office recommends that the Commission find reason to believe that Mark Sharpe for Congress and Mark Brown, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).<sup>13</sup>

### **3. Friends of Mark Sharpe**

The final allegation by Complainant was based on a statement by the campaign manager of Friends of Mark Sharpe appearing in the *Tampa Tribune* article. The article states that, according to the campaign manager, "the restaurant chain [was to] host a fundraiser for Sharpe [the following] month." The complaint suggested that this statement indicated that the Sharpe campaign was about to accept an illegal corporate contribution.

Neither the Sharpe campaign nor Outback responded to this specific allegation. Although the allegation is speculative, this Office cannot discount the possibility that some violation has occurred; the article noted that the Outback PAC had already contributed \$5,000 to the Sharpe campaign for the 1996 primary election. Accordingly, this Office makes no recommendation at this time against Friends of Mark Sharpe. If more concrete information regarding such a violation is obtained during the course of the investigation in this matter, this Office will make the appropriate recommendations to the Commission.

### **III. PROPOSED DISCOVERY**

At this time, this Office believes that the best course of action with respect to discovery is to seek documents and responses to questions from the Sharpe campaign, Outback and Outback officials Robert Basham, Chris Sullivan and Joseph Kadow, and from the franchisees mentioned

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<sup>13</sup> With regard to the failure to report the occupation of Ronald Patak, Commission records indicate that the Sharpe campaign sent a follow-up letter to Mr. Patak requesting his employer information. However, the letter was sent to the Outback headquarters address, where the Sharpe campaign could not reasonably have expected to find Mr. Patak. Accordingly, the Sharpe campaign's violation of section 434(a)(1) with respect to Mr. Patak would involve the reporting of both his mailing address and his occupation.

in the *Tampa Tribune* article. Additionally, this Office will conduct informal interviews with Rick Fontaine, the Sharpe campaign's former treasurer, and Terry Spirio, the Sharpe campaign volunteer, and question them as to their knowledge regarding the solicitation of contributions. This Office will also interview those individuals whose mailing addresses were given as 550 North Reo Street, but who were not identified as working for Outback, regarding the circumstances of their contributions. Once this information is properly analyzed, this Office will recommend appropriate subpoenas for depositions to the Commission. Accordingly, at this time, this Office recommends that the Commission approve the attached Subpoenas to Produce Documents and Orders to Submit Written Answers.

#### **IV. RECOMMENDATIONS**

1. Find reason to believe that Outback Steakhouse of Florida, Inc., Joseph Kadow, Chris Sullivan and Robert Basham each violated 2 U.S.C. § 441b(a).
2. Find reason to believe that Mark Sharpe for Congress and Mark Brown, as treasurer, violated 2 U.S.C. § 441b(a).
3. Find no reason to believe that Mark Sharpe for Congress and Mark Brown, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(A) and 441f, with respect to the acceptance and reporting of the contribution from Kimberlee Brown.
4. Find no reason to believe that Kevin Harron and Kimberlee Brown violated 2 U.S.C. § 441f and close the file as to them.

5. Find reason to believe that Mark Sharpe for Congress and Mark Brown, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) with respect to the reporting of the contributions from Mel Danker, Louis J. Chiavacci, Gene Knippers, Christopher L. Bliss, Ronald Patak and Jodi Collins.
6. Approve the attached Factual and Legal Analyses, the attached Subpoenas to Produce Documents and Orders to Submit Written Answers, and the appropriate letters.

Lawrence M. Noble  
General Counsel

August 28, 1997  
Date

BY: Lois G. Lerner  
Lois G. Lerner  
Associate General Counsel

**Attachments:**


1. Factual and Legal Analyses (7)
2. Subpoenas to Produce Documents and Orders to Submit Written Answers (9)



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE ROSS   
COMMISSION SECRETARY

DATE: SEPTEMBER 3, 1997

SUBJECT: MUR 4434 - FIRST GENERAL COUNSEL'S REPORT

The above-captioned document was circulated to the Commission  
on Thursday, August 28, 1997.

Objection(s) have been received from the Commissioner(s) as  
indicated by the name(s) checked below:

Commissioner Aikens	XXX
Commissioner Elliott	XXX
Commissioner McDonald	—
Commissioner McGarry	—
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda for  
Tuesday, September 09, 1997.

Please notify us who will represent your Division before the Commission on this  
matter.